**CHECKMARX RESELLER AGREEMENT**

This Agreement, dated \_\_\_\_\_\_\_\_\_\_\_ (the “**Effective Date**”), is made between Checkmarx Inc., having a place of business at 140 E. Ridgewood Avenue, Suite 415, South Tower, Paramus New Jersey 07652 (“Checkmarx”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its main place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Reseller**”).

**WHEREAS** Checkmarx is the owner or authorized licensee of certain commercially available computer software programs in object code form as set out in **Annex A** and the related software documentation (the “**Products**”); and

**WHEREAS** Checkmarx wishes to have its Products marketed, supported and sold to end user customers located in North America (the “**Territory**”) under the terms and conditions set forth in this Agreement; and

**WHEREAS** Reseller has the ability, knowledge, legal standing and wishes to have certain rights to market and resell the Products in the Territory;

**NOW, THEREFORE**, Checkmarx and Reseller agree as follows:

1. **Reseller Appointment**

Checkmarx hereby appoints Reseller as a non-exclusive reseller of the Products in the Territory for a period of one year (the “**Initial** **Term**”) commencing with the Effective Date of this Agreement, subject to the sales quotas defined in **Annex B** to this Agreement, and subject to Reseller’s compliance with all terms and conditions of this Agreement. Reseller hereby represents that it has and will maintain throughout the term of this Agreement the skill, equipment and personnel required for the execution of its obligations under this Agreement.

1. **Reseller License Grant and Restrictions**
2. Grant. Subject to the terms of this Agreement and the Reseller’s performance of its obligations as defined herein, Checkmarx hereby grants Reseller a non-exclusive license to market and distribute the Products to Customers in the Territory. For the purpose of this Agreement, “**Customers**” shall refer to an end user customer of the Reseller who purchases a license to use the Product from Reseller and who agrees to be bound by the terms and conditions set out in the Checkmarx End User License Agreement (the “**EULA**”) to use the Product for the Customer's internal business purposes, in the form attached hereto as **Annex C** as updated by Checkmarx from time to time.
3. No Limitation on Checkmarx’s Rights. Nothing in this Agreement shall prohibit or limit Checkmarx’s right to market, sell, distribute or promote the Products in any market or territory (including but not limited to, the Territory), directly or by way of other partners and resellers, subject only to the Deal Registration and Conflict Resolution provisions in Section 5 of this Agreement.
4. No Reverse Engineering. RESELLER SHALL NOT, AND SHALL UNDERTAKE DILIGENT EFFORTS TO ENSURE THAT ANY THIRD PARTIES DO NOT: (I) ALTER, MODIFY, ADAPT, CREATE DERIVATIVE WORKS, TRANSLATE, DECOMPILE, DISASSEMBLE, REPRODUCE, OR REVERSE ENGINEER ALL OR ANY PORTION OF THE PRODUCT(S) OR ATTEMPT TO DO SO; (II) PERMIT, AUTHORIZE, OR ACQUIESCE IN, ANY OTHER PERSON OR ENTITY ENGAGING IN THESE ACTIVITIES, OR ATTEMPTING TO DO SO; OR (III) USE THE PRODUCT(S) OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED BY CHECKMARX FOR THE PURPOSES OF DEVELOPING, OR HAVING DEVELOPED ANY PRODUCTS OR SERVICES COMPETITIVE WITH ANY OF CHECKMARX’S PRODUCTS AND/OR SERVICES. SHOULD IT BECOME KNOWN TO RESELLER THAT ANY THIRD PARTY HAS ATTEMPTED TO MODIFY, REPRODUCE OR REVERSE ENGINEER THE PRODUCT(S) OR ANY PART THEREOF, RESELLER SHALL IMMEDIATELY NOTIFY CHECKMARX AND DIRECT SUCH THIRD PARTY TO CEASE AND DESIST IN THE ACTIVITY AND TO CONTACT CHECKMARX DIRECTLY.
5. **Reseller Obligations**

Reseller shall:

1. Educate its personnel from time to time with information relating to the Products.
2. Diligently perform its marketing and sales efforts under this Agreement including participation in select conferences, publishing press releases, reviewing and publishing material related to the Product, and all other marketing activities agreed upon between the parties hereto as defined non-exhaustively in **Annex D**.
3. Enter into marketing activities for generating sales leads and other activities assisting with growing the Checkmarx business in the Territory.
4. Proceed with the deal registration procedures as described in Section 5.
5. Grant Customers, with good service as customary in the local market, maintaining Checkmarx’s reputation and good will.
6. Unless the Customer elects to receive the maintenance, upgrade and support services (“**M.U.S.**”) directly from Checkmarx, provide Customers with 1st and 2nd level support where appropriate, and provide Customer training, configuration of Product to accommodate Customer needs where appropriate, including the deployment and implementation of the Product.
7. Provide Checkmarx with six (6) months marketing and sales targets.
8. Provide the Checkmarx EULA to Customers and ensure that all Customers accept the Checkmarx EULA as a condition of their receipt and use of the Product, and maintain sufficient documentation of same.
9. Offer all Checkmarx Products and services to Customers in accordance with Checkmarx’s then-current price list, seeking Checkmarx’s prior written approval before offering any price quote to Customers which deviates in any direction for more than ten percent (10%) from the recommended pricelist as defined in **Annex A**.
10. Refrain from making any representations or warranties with respect to the Product other than those offered by Checkmarx.
11. Bear all costs related to Reseller’s activities as set out in this Agreement.
12. Provide all reasonably requested cooperation and assistance to enable Checkmarx to enforce its rights in the Territory, including but not limited to enforcement of its EULA and intellectual property rights.
13. Undertake its duties under this Agreement in accordance with all applicable laws, best practices, and in a manner protecting the best interests of Checkmarx and maintaining Checkmarx’s reputation and good will.
14. Undertake the additional duties and obligations as defined in **Appendix 1** of this Agreement, according to the accreditation level of Reseller.
15. **Checkmarx Obligations**

Subject to Reseller’s compliance with the terms and conditions of this Agreement, Checkmarx shall undertake commercially reasonable efforts during the term of this Agreement to:

1. Qualify and train Reseller personnel in connection with technical matters related to the Product.
2. Share relevant technological information relating to the Product with Reseller and provide a commercially reasonable level of assistance and coordination with Reseller in discharging its responsibilities and obligations.
3. Make available Checkmarx’s Product documentation to Reseller, as it is updated and modified from time to time, without additional charge.
4. Enter into cooperative marketing activities for generating sales leads and other activities assisting with growing Checkmarx business.
5. Provide a Not-For-resale (NFR) license of Checkmarx’s Products to Reseller within reasonable time from the Effective Date.
6. Offer Reseller product discounts as specified in **Annex F**.
7. **Deal Registration and Conflict Resolution**
   1. Deal Registration. Reseller shall perform a deal registration with Checkmarx with regards to any active Customer opportunity it is working on. Such deal registration shall include sufficient Customer detail as may be reasonably requested by Checkmarx to register the potential Customer opportunity (which shall include, at a minimum, Customer entity name, Customer location (main headquarters and purchasing location, if different), the Customer department or business unit responsible for purchasing the Product, contact details of the Customer representative with purchasing authority, potential deal size, and projected Customer revenue). Checkmarx may, in its sole discretion, approve or reject the registration of the potential Customer. An opportunity is deemed active from the time that a delivery of a license and Proof of Concept (POC) pilot is engaged with the approved registered potential Customer. A Customer remains registered for three (3) months following the initial Customer registration process (during this time, a “**Registered Opportunity**”).
   2. Conflict Resolution. Following the completion of the initial POC, and during the time period wherein the potential Customer remains classified as a Registered Opportunity according to Section 5.1, should the Registered Opportunity engage with another authorized Reseller through an RFP tender or else, the Reseller owning the Customer registration shall be provided with:
   3. Any extra discounts as the case may be and at Checkmarx’s entire discretion;
   4. A minimum of ten percent (10%) commission on the net deal should the Registered Opportunity choose to acquire Checkmarx Products through an alternative authorized Reseller for any given reason. Checkmarx may, at its sole discretion, approve a higher commission to Reseller based on Reseller’s efforts in sales cycle to the Registered Opportunity.
8. **Administrative Procedures**
9. Authorized Products. The Checkmarx Products authorized for distribution under this Agreement are specified in **Annex A**, which shall be updated by Checkmarx from time to time in its discretion.
10. Invoicing. The manner of invoicing is defined in **Annex G**.
11. Payments to Checkmarx. Reseller will promptly pay Checkmarx the nonrefundable amounts invoiced according to **Annex G**.
12. Issuance of Customer Licenses. Checkmarx reserves the right to withhold the issuance of Product licenses conditioned on verification of full payment from the Customer. In the event the licenses are provided to Reseller for distribution, Reseller is responsible for distribution of the Product licenses to the Customer and may not distribute the licenses to any third party other than the original purchasing Customer.
13. Payments for Maintenance, Updates, Support (M.U.S.), and Enhancements (Checkmarx Provides Support). To the extent that the Customers elect to receive maintenance and support services and updates and enhancements for the Products from Checkmarx, Reseller will pay Checkmarx the nonrefundable amounts invoiced according to **Annex G** for such services.
14. Payments for Maintenance, Updates, Support (M.U.S.), and Enhancements (Reseller Provides Support). Checkmarx agrees to offer Reseller product discounts as specified in **Annex F** off the Checkmarx MSRP list price if Reseller performs the first and second level technical support to the Customer. These discounts shall be reflected in the invoice delivered in accordance with **Annex G** which shall be paid by Reseller on a nonrefundable basis.
15. **Payment Terms**
16. Reseller will make all payments to Checkmarx such that they are received by Checkmarx no later than thirty (30) days after Checkmarx’s sending of an invoice for payment to Reseller. Reseller acknowledges that certain Checkmarx obligations are subject to Checkmarx’s actual receipt of up-front payments from Reseller, including the license delivery and support obligations set out in Sections 6.4 and 9.3 of this Agreement.
17. All payments under this Agreement will be made in US Dollar ($) currency by bank-to-bank wire transfer to an account designated by Checkmarx, unless otherwise agreed to by Checkmarx in writing.
18. Taxes. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Reseller will pay all taxes and duties assessed in connection with this Agreement and its performance by any authority except for taxes payable on Checkmarx’s net income. Checkmarx will be promptly reimbursed by Reseller for any and all taxes or duties that Checkmarx may be required to pay in connection with this Agreement or its performance.
19. Payment Default. In the event of an overdue payment (a “**Payment Default**”), interest will be accrued daily of the overdue payment as of the date of the Payment Default at the maximum rate permitted by law. Reseller bears all risk of non-payment by Customers, and all payments due to Checkmarx hereunder are due and payable regardless of Reseller’s actual receipt of funds from the Customer.

1. **Records**
   1. Records. Reseller will maintain complete records, during and for two years after the termination or expiration of this Agreement, regarding Reseller’s marketing, sales and distribution activities under this Agreement, inducing but not limited to records regarding the distribution of the Products and EULAs to each Customer, and each Customer’s acceptance of same.
   2. Retention. Upon two years after the termination or expiration of this Agreement, Reseller shall, at Checkmarx’s option, (a) destroy the Records, (b) deliver the Records to Checkmarx.
2. **Maintenance, Support, and Training**
3. By Reseller. Unless the Customer selects Checkmarx as the exclusive provider of M.U.S. services during the term of the Customer agreement, Reseller will be responsible for providing the following support to its Customers: installing the Products as needed; training Customers; providing all direct first and second level technical support to Customers, including problem analysis and using its reasonable efforts to provide solutions, error correction for the Products consistent with Reseller's standard maintenance and support policies and procedures; and facilitating the coordination of third level support activities undertaken by Checkmarx, as relevant.
4. By Checkmarx. If the Customer selects Checkmarx as the exclusive provider of M.U.S. services during the term of the Customer agreement, Checkmarx shall provide M.U.S. services directly to the Customer. If the Customer does not select Checkmarx as the exclusive provider of M.U.S. services, Checkmarx shall provide Reseller, subject to Checkmarx’s prior receipt of the payments specified in **Annex A, Annex F** and **Annex G** with:
   1. error corrections for the Products;
   2. updates and enhancements for the Products;
   3. access to Checkmarx’s relevant personnel for inquiries from Reseller relating to the Products between the hours of 9AM and 5PM (GMT), on Checkmarx’s business days; and
   4. training in accordance with the terms and conditions and pricing specified in **Annex A**, provided that Reseller pays the travel and living expenses of Checkmarx’s personnel in connection with any out-of-town training requested by Reseller.
5. Provision of Support. Support is only provided to Customers who maintain an active and fully-paid support subscription or term software license. All support obligations of Checkmarx are subject to the Customer’s full payment of such maintenance subscription(s) or term license(s) (as applicable), and Checkmarx reserves the right to verify such full payment(s) prior to providing support to the Customer. Reseller shall cooperate with Checkmarx in connection with such verification. Checkmarx reserves the right to suspend or withhold support services to any Customer in the event Checkmarx is unable to verify the Customer is current in its payment obligations, or in the event of chargebacks or other payment deficiencies related to the Customer.
6. **Confidentiality and Non-Competition**
7. Obligations. Reseller agrees that it will not disclose to any third party or use any Confidential Information disclosed to it by Checkmarx, except to carry out its obligations under this Agreement, and that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of Checkmarx in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. As used herein, the term “**Confidential Information**” means: (a) any technical, managerial, financial or business information in any form (including but not limited to specifications, prototypes, software, models, drawings, product plans, pre-release products, marketing plans, business opportunities, customer lists, personnel data, research and development activities, know-how and third party information); and (b) includes all information which a reasonable person would expect to be treated as confidential including the terms of this Agreement, whether or not designated by Checkmarx as confidential or proprietary prior to disclosure.
8. Exceptions. “Confidential Information” will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) is lawfully obtained by the receiving party without breach of a nondisclosure obligation; (iii) is independently developed or already in the possession of the receiving party as shown by the receiving party's contemporaneous records; or, (iv) is required by law to be disclosed, provided that the receiving party gives prompt written notice of such requirement prior to disclosure with reasonable opportunity to object to the disclosure of the Confidential Information.
9. Non-competition. During the term of the Agreement, and to the extent permitted by law, Reseller shall not resell, promote, and or represent in any fashion competitive products and the competition at large as commonly defined or defined by Checkmarx in **Annex E**.
10. **Proprietary Rights**
    1. Intellectual Property Rights. “**Intellectual Property Rights**” means patent rights (including but not limited to rights in patent applications or disclosures and rights of priority), trademark rights, copyright (including but not limited to rights in audiovisual works and moral rights), domain names, trade secret rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction, including but not limited to the Territory.
    2. Marks. “**Marks**” means the “Checkmarx” word mark, the “Checkmarx” logo mark, and any of Checkmarx’s trademarks, trade names, service marks, and/or service names specified in **Annex A**.
    3. Checkmarx’s Intellectual Property Rights.
    4. Products. The Products are and will remain the sole and exclusive property of Checkmarx and its suppliers, whether the Products are separate or combined with any other products, including Resellers products. Checkmarx’s rights under this subsection a) will include, but not be limited to all Intellectual Property Rights in the Products. This Agreement does not grant Reseller any right, title or interest in any of the Checkmarx Products or any Intellectual Property Right of Checkmarx except as expressly granted herein. All rights not expressly granted to Reseller are reserved.
    5. Notices. Reseller will not delete or in any manner alter the trademarks or Intellectual Property Rights notices of Checkmarx and its suppliers, if any, appearing on the Products as delivered to Reseller. As a condition of the license rights granted to Reseller in this Agreement, Reseller will reproduce and display such notices on each copy it makes of any Checkmarx Product or Documentation.
    6. Reseller's Duties. Reseller will take customary measures in the marketing and distribution of the Products to protect Checkmarx’s Intellectual Property Rights in the Products, no less than the extent to which Reseller protects its own Intellectual Property Rights, and will, to the extent permitted by law, report promptly to Checkmarx any suspected or confirmed infringement of Checkmarx’s Intellectual Property rights of which Reseller becomes aware.
    7. No Registration. Reseller shall take no action, directly or indirectly to register any Intellectual Property Rights of Checkmarx in the Territory, shall not register any Checkmarx trademarks (or its variations, translations, transliterations, or derivatives), domain names, or copyrights and shall provide commercially reasonable assistance to Checkmarx to prevent the occurrence of such activities by third parties.
    8. Third Party Infringement. Checkmarx reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the Territory. Reseller shall provide all assistance reasonably requested by Checkmarx in connection with enforcing Checkmarx’s Intellectual Property Rights. Reseller further agrees to promptly notify Checkmarx of any known or suspected breach of the EULA or other unauthorized use or distribution of the Products in the Territory.
    9. Trademarks; Trademark License. Subject to the terms and conditions of this Agreement, Checkmarx grants Reseller a nonexclusive license for the term of this Agreement to use the Marks in Reseller's marketing of the Products, provided that such use: (i) is in accordance with Checkmarx’s trademark usage guidelines then in effect; or (ii) has been approved by an authorized representative of Checkmarx in writing. Such use must reference the Marks as being owned by Checkmarx. Nothing in this Agreement grants Reseller ownership or any rights in or to use the Marks, except in accordance with this license, and Reseller's use of the Marks will inure to the benefit of Checkmarx. The rights granted to Reseller in this license will terminate upon any termination or expiration of this Agreement. Upon such termination or expiration, Reseller will no longer make any use of any Marks. Checkmarx will have the exclusive right to own, use, hold, apply for registration for, and register the Marks during the term of, and after the expiration or termination of, this Agreement; Reseller will neither take nor authorize any activity inconsistent with such exclusive right.
11. **Warranty Disclaimers and Limitations of Liability**
12. Limited Warranty. Checkmarx warrants to Reseller that during the ninety (90) days following delivery to Reseller, the storage media containing the Products will be free from defects in materials and workmanship. In the event the storage media fails to conform to such warranty, as Reseller's sole and exclusive remedy for such failure Checkmarx will, at its option and without charge to Reseller, repair or replace the storage media, provided the nonconforming item is returned to Checkmarx within the ninety (90) day warranty period.
13. Disclaimer of Other Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY PROVIDED IN SECTION 12.1, ALL PRODUCTS AND SERVICES ARE PROVIDED TO RESELLER “AS-IS” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
14. DAMAGES LIMITATIONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CHECKMARX AND ITS LICENSORS AND AFFILIATES SHALL NOT BE LIABLE TO RESELLER OR TO ANY THIRD PARTY, AND RESELLER HEREBY WAIVES, ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY REGARDLESS OF WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN, OR THEIR LIKELIHOOD OR THE POSSIBILITY OF GREATER LOSS HAS BEEN DISCLOSED TO CHECKMARX.
15. TOTAL AGGREGATE LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND SUBJECT ALWAYS TO SECTION 12.3, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF CHECKMARX AND ITS LICENSORS AND AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE DISCOUNTS EARNED BY RESELLER FOR THE PRODUCT LICENSE FEES AND SUPPORT SERVICE FEES GENERATED PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST INCIDENT GIVING RISE TO LIABILITY.
16. **Indemnification**
17. Reseller shall indemnify, defend and hold harmless Checkmarx from and against any and all claims, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys and legal fees) resulting from or arising out of any breach by Reseller of any of its obligations, representations and warranties under this Agreement.
18. **Term and Termination**
19. Term. The term of this Agreement will begin on the Effective Date and will continue during the Initial Term set out in Section 1 unless this Agreement is terminated earlier in accordance with Sections 14.2 or 14.3. Thereafter, this Agreement shall automatically renew for successive one (1) year periods unless either party terminates earlier as set out in Sections 14.2 and 14.3.
20. Events of Termination. Either party will have the right to terminate this Agreement immediately upon written notice if:
    1. The other party breaches any material term or condition of this Agreement and, if such breach is capable of cure fails to cure such breach within thirty (30) days after written notice;
    2. The other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
    3. Reseller has not met at least seventy percent (70%) of the agreed Target Sales Quotas as defined in **Annex B** in any two consecutive quarters.
21. Rights to Terminate for Convenience. During the Initial Term, Checkmarx may terminate this Agreement for convenience at any time via fifteen (15) days written notice of termination to the Reseller. After the Initial Term this Agreement can be terminated for convenience by either party with forty-five (45) days written notice to the other party.
22. Effect of Termination.
    1. Upon termination or expiration of this Agreement, (i) all licenses granted to Reseller hereunder will terminate, (ii) Reseller shall immediately cease promoting, marketing and supporting the Products, (iii) Reseller shall submit to Checkmarx a complete list of all pending negotiations with potential Customers in which Reseller was involved with prior to termination which have not been consummated or finalized, (iv) Reseller will (except as specified in subsection (b) below) immediately return to Checkmarx or at Checkmarx’s discretion destroy all copies of the Products and other Confidential Information in its possession or control, and an officer of Reseller will certify to Checkmarx in writing that Reseller has done so.
    2. Upon termination or expiration of this Agreement, Checkmarx will have the option, in its sole discretion, of:
       1. electing, at any time, to sole offer maintenance and support for the Products directly to Customers in accordance with Checkmarx’s then applicable terms and conditions for such services; or
       2. permitting Reseller to continue to provide maintenance and support for the Products to its Customers and continue to use copies of the Products, to the extent needed to provide such services, pursuant to a limited license agreement to be entered between Checkmarx and Reseller promptly following such termination or expiration; or
       3. migrating Customer support to a third party authorized by Checkmarx to provide support to Customers in the Territory.
    3. Upon termination or expiration of this Agreement, Checkmarx may agree, in its sole discretion, to continue to offer product discounts as specified in **Annex F** from the Checkmarx MSRP list price for any outstanding direct business forecasted, acknowledged and accepted by Checkmarx that should close during the period of three (3) months from the date of termination.
23. **Prohibited Activities**
    1. No Export. Checkmarx does not consent to the exportation of Products covered by this Agreement to, or the importation of Products into, any country outside the Territory. To the maximum extent permissible under all applicable law, unless otherwise agreed in written between Reseller and Checkmarx, Reseller shall not directly or indirectly: (a) export Products for sale or resale to any country outside the Territory or import Products into any such country for sale or resale, or (b) sell Products within the Territory if Reseller knows or has reason to believe that the purchaser or any third party will export the Products to or import the Products into any country outside the Territory for sale or resale.
    2. No Bribery. In furtherance of Reseller's obligations above, Reseller shall not take any action or omit to take any action that would cause it or Checkmarx to be in violation of, the U.S. Foreign Corrupt Practices Act (“FCPA”), or any other applicable anti-bribery laws or regulations of any jurisdiction and shall cause its shareholders, subsidiaries, officers, directors, employees and agents to do the same. Without derogating from the generality of the above, Reseller represents, warrants and agrees that, in connection with the performance of its duties hereunder, it shall not make any payments, in money or any other item of value or make any offers or promises to pay any money or any other item of value to: (a) any government official, (b) any foreign political party, (c) any candidate for foreign political officer or (d) any other person or entity, with the knowledge that such payment, offer or promise to pay will be made to any government official for the purpose of influencing such government official to make one or more business decisions favorable to Checkmarx, Reseller or both. Reseller further represents that no government official is a principal, owner, officer, employee or agent of any entity in which Reseller has an interest, and no government official has any material financial interest in the business of Reseller.
    3. Blocked Lists. Reseller represents and warrants that it is not, and shall not permit distribution of the Products to, any “**Restricted Party**,” which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions (a **“Prohibited Territory**”), or (b) on the U.S. Department of Commerce Denied Person’s List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Reseller shall not distribute, transfer or permit access to any Product to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Checkmarx and, as appropriate, any relevant government agency.
24. **General**
    1. Governing Law. This Agreement will be governed by and construed in accordance with the laws of New York, United States of America. In the event of any controversy or claim arising out of or relating to this Reseller Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Reseller Agreement shall be resolved by binding arbitration administered by the American Arbitration Association (“**AAA**”) in accordance with the rules of the AAA. The place of arbitration will be New York. The official language of the arbitration will be English. The tribunal will consist of one arbitrator to be appointed by AAA. The arbitration proceedings will be confidential, and the arbitrator may issue appropriate protective orders to safeguard each party’s Confidential Information. The arbitral award will be final and binding upon the parties, and the party to the award may apply to a court of competent jurisdiction for enforcement of the award. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.
    2. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
    3. Prohibition on Assignment and Sublicensing. Reseller shall not be permitted to subcontract, sublicense or assign any of its duties or obligations under this Agreement without advance written permission from Checkmarx, which may be withheld by Checkmarx in its sole discretion. Checkmarx shall be permitted to freely assign any right, obligation, duty or interest in this Agreement to any party in Checkmarx’s sole discretion.
    4. Binding Effect. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
    5. Entire Agreement. This Agreement and its Annexes are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
    6. Survival. The rights and obligations of the parties relating to Confidentiality, Proprietary Rights, Warranty, Limitations of Liability and Effects of Termination will survive the termination or expiration of this Agreement.
    7. Severability. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect. The parties agree to re-negotiate in good faith any term held invalid and to be bound by the mutually agreed substitute provision.
    8. No Waiver. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach hereunder shall not be deemed a waiver by that Party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

The parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

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| **Checkmarx Inc.** | **Reseller** |
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| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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**Annex A: Checkmarx Products and M.U.S. Services**

Products: Checkmarx *CxSuite* and related components as defined in the Checkmarx MSRP pricelist provided to Reseller.

*Note*: Product upgrades, new or changed products, new or changed packages and pricing adjustments may be offered at Checkmarx’s sole discretion. They will be provided in addendums to this agreement and will be made with the prior knowledge of the Reseller.

Maintenance, Upgrade and Support (“**M.U.S.**”) Services: As defined in Checkmarx MSRP pricelist provided to Reseller.

Marks:

* Checkmarx (word mark)
* Checkmarx (logo)
* CxSAST
* CxSuite
* Choose what Developers Use

**Annex B: Sales Quotas**

Target Sales Quotas: to be established by Checkmarx and defined over 4 consecutive quarters from the Effective Date.

**Annex C: Customer EULA**

Current version of Checkmarx term software license and support agreement (the “EULA”) available online: <https://www.checkmarx.com/legal/eula> or the current downloadable version provided by Checkmarx, as updated from time to time.

**Annex D: Marketing Plan and Reporting**

Reseller shall take reasonable efforts to market and sell the Products which include but is not limited to investing in the following categories:

Marketing Plan:

* Documentation (local)
* Event participation:
  + Seminars
  + Webinars
  + Conferences / exhibitions
* PR / News

Sales Plan:

* Define Sales targets
* Pipeline / deal registration
* Sales events
* Road shows
* POC / pilots
* Customer support (SLA)

Methodologies and other issues:

* Price list adjustments
* Special bids
* Deal registration
* Agreements – EULA, Reseller etc.
* Budgets expected from Checkmarx (marketing and sales efforts)

Reseller shall provide a monthly pipeline report to Checkmarx that should include prospect name and contact information, some estimated measure of deal closure (i.e. 25, 50, 75, 90, 100%), timing, amount, and an updated status. A proposed report format is set forth below:



**Annex E: List of Competitors**

List to be provided by Checkmarx.

**Annex F: Discount Schedule**

Discounts are set out in **Appendix 1** depending on the reseller’s qualification level and are subject to update from time to time.

**Annex G: Invoicing**

Checkmarx will invoice reseller for:

1. Product License Fee: The net cost of the Products, i.e., list price, as defined in the Checkmarx then-current price list, minus the Reseller discount as set forth in Annex F, and, if applicable;
2. M.U.S. Fee (Reseller Provides Support): If Reseller will be responsible for providing 1st and 2nd level technical support to the Customer, Checkmarx will invoice Reseller for the M.U.S. fee as defined in the Checkmarx then-current pricelist, minus the Reseller discount as set forth in Annex F; or
3. M.U.S. Fee (Checkmarx Provides Support): If the Customer elects to receive M.U.S. directly from Checkmarx, Checkmarx will invoice Reseller for the M.U.S. fee as defined in the Checkmarx then-current pricelist with no discount applied.

Appendix 1- Discount Schedule

Subject to the Cx Reseller Agreement for North America

Additional Commercial Terms

**Welcome to the Checkmarx PLUS Reseller program. The following shall be included as part of the Checkmarx Reseller Agreement for North America (“Reseller Agreement”) by and between Reseller and Checkmarx Inc. If there is any conflict between this Appendix and the body of the Reseller Agreement the terms of this Appendix shall supersede.**

1. **Checkmarx PLUS Reseller Discount Schedule**

* As a Checkmarx Plus Reseller you are eligible to the following Discounts:
  + Product Discount - 15% off list
  + Training Discount - 10% off list
  + Support Discount - 10% off list
  + Professional Services Discount – 10% off list
* Deal Registration: Our Checkmarx +Plus Reseller is eligible for one of two deal registrations methods.
  + “New Account Introduction” deal registration-
    - The Reseller will be paid 15% of the agreed upon customer sell price for introducing Checkmarx into and selling Checkmark products into the customer.
  + “Focus Accounts” deal registration
    - The Reseller will be paid 20% of the agreed upon sell price for introducing Checkmarx into and selling Checkmark products into any accounts defined as “Focus Accounts” by the Checkmarx channel team.
    - *\*\*Note- In the event that the end user discount reaches or exceeds 45% Checkmarx holds the right to revisit the percentage the Reseller is paid for deal registration and adjust accordingly.*
* Duties of Reseller under the Checkmarx PLUS Reseller program:
  + Participate in Checkmarx sales training twice a year.
  + Train one engineer per territory at the 101 engineering training level
  + Train a minimum of two engineer’s at the 101 and 102 engineer training level for use as a subject matter expert.
  + Hold a quarterly Reseller business review with Checkmarx management which includes-
    - Forecast review.
    - Quarterly pipeline review.
    - Quarterly business plan review.
    - Quarterly “Focus Account” list review.
  + Sales teams participate in quarterly account mapping sessions.
  + Annual marketing planning session.
  + Checkmarx must be represented on Reseller’s web site.
  + Participate in two call out campaigns per year.